SUMMARY

FINAL RULE

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) PROGRAM

Background

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104-193), as amended, is the welfare reform law that established the Temporary Assistance for Needy Families (TANF) program. TANF is a block grant program designed to make dramatic reforms to the nation's welfare system by moving recipients into work and turning welfare into a program of temporary assistance. TANF replaced the national welfare program known as Aid to Families with Dependent Children (AFDC) and the related programs known as the Job Opportunities and Basic Skills Training (JOBS) program and the Emergency Assistance (EA) program.

Principles Governing the Final Rule

The Administration for Children and Families (ACF) has published a final rule that governs key provisions of the TANF program. It incorporates the core TANF accountability provisions, including work requirements, time limits, State penalties, and data collection and reporting requirements. It does not address other key provisions, such as the High Performance Bonus, the Bonus to Reward Decreases in Illegitimacy Ratios, the Child Poverty Rates, and the Tribal TANF program. We expect to publish rules for most of these other provisions in the coming months.

The TANF final regulations provide States a clear and balanced set of rules for meeting the law's performance goals. They reflect PRWORA's strong focus on moving recipients to work and self-sufficiency, and on ensuring that welfare is a short-term, transitional experience, not a way of life. The rules encourage and support State flexibility, innovation, and creativity to develop programs that can reach all families and provide supports to working families. They do not tell States how to design their TANF programs or spend their funds. At the same time, the rules hold States accountable for moving families toward self-sufficiency.

Because of the changed Federal role regarding welfare reform, the rules regulate under two basic circumstances: (1) where Congress has explicitly directed the Secretary to regulate; and (2) where Congress has charged HHS with taking action (e.g., imposing penalties). In the latter case, we have set out, in rules, the criteria and procedures we will use in carrying out our express authority to hold States accountable by assessing penalties.

In drafting these rules, we considered nearly 300 comments that we received following publication of a Notice of Proposed Rulemaking on November 20, 1997. As a result of these comments and the continuing progress of States in implementing their welfare reform programs, we made a number of changes in the final rules.

The final rules will take effect on October 1, 1999.

Key Provisions

The following information highlights many important aspects of the rules. The summary does not address certain areas (for example, program purposes, individual responsibilities, and individual development accounts), where the rules merely paraphrase statutory provisions to add clarity and completeness.

DEFINITION OF ASSISTANCE

The term "assistance" is important because the major TANF program requirements (e.g., work requirements, time limits on Federal assistance, and data reporting) apply only to families receiving assistance.

- In the final rules, the definition includes payments directed at ongoing, basic needs – even when individuals are participating in community service and work experience (or other work activities) as a condition of receiving payments that address their basic needs.

- It excludes non-recurrent, short-term benefits designed to deal with individual crisis situations rather than ongoing need. These benefits cannot provide for needs that will extend beyond 4 months. The definition also excludes child care, transportation and supports provided to employed families, Individual Development Account (IDA) benefits, refundable earned income tax credits, work subsidies to employers, and services such as education and training, case management, job search, and counseling.

The revised definition of assistance will make it easier for States to use welfare block grant dollars to help people who have left welfare (defined as payments to cover ongoing basic needs) stay off the rolls -- or to help families so they do not have to go on welfare in the first place.

The preamble clarifies that assistance received by noncustodial parents and other adults who are not heads of household or spouses of heads of households would not count against the family's time limit.

The rule also defines Welfare-to-Work (WtW) cash assistance as assistance that addresses basic needs and that can be legally converted to cash. (If an individual receives WtW cash assistance, that benefit counts against the five-year limit on Federal TANF assistance; if the individual receives another type of WtW benefit, that is not WtW cash assistance, the benefit does not count against the limit on Federal TANF assistance.)

SEPARATE STATE PROGRAMS

States may spend their State maintenance-of-effort (MOE) funds within the TANF program or in "separate State programs" (SSPs) that are not subject to many of the TANF requirements. Under the final rules, the creation of SSPs does not affect the penalty relief available to States.

States wanting caseload reduction credit or high performance bonuses must submit quarterly SSP-MOE Data Reports. These provide disaggregated and aggregated data (that is generally comparable to the data in the TANF Data Report) on families receiving assistance through separate

State programs and families no longer receiving assistance through SSPs. (If an SSP provides benefits that are not "assistance," it is not covered by this reporting requirement.)

States must also report aggregate program information on all SSPs annually and submit quarterly Financial Reports that contain information on State spending under SSPs and funding categories.

CHILD-ONLY CASES

States may define “families” for the purpose of providing assistance. Work participation rate and time-limit calculations apply only to families that include adults (or minor heads-of-household) under State policy and practice.

We will collect data on child-only cases (including cases converted since the past month), use the data collection system to evaluate the nature of and reasons for child-only cases, and monitor changes in the number of these cases.

WORK

PARTICIPATION REQUIREMENTS AND WORK ACTIVITIES

At the heart of the statute is the expectation that, in exchange for flexibility in designing appropriate programs and services, each State be held accountable for moving families from welfare to self-sufficiency through work.

Each State must meet two separate work participation rates that reflect how well it succeeds in engaging adults in work activities. The minimum participation rate for adults in all families (the overall rate) started at 25 percent in FY 1997, but is 40 percent in FY 2000 and rises to 50 percent in FY 2002 and thereafter. The minimum participation rate for adults in two-parent families (the two-parent rate) was 75 percent in fiscal years 1997 and 1998, but has increased to 90 percent. A State that fails to meet participation rates will be subject to a monetary penalty.

If a State fails one of the requirements, it may qualify for a reduced work penalty based on the "degree of noncompliance."

The rules provide limited criteria for forgiving State penalties under "reasonable cause." They also forgive State penalties if the State achieves compliance under an approved corrective compliance plan.

States may define many key terms, including the activities that count as work (within the limits of the statute). By not defining these terms ourselves, we are giving States overall flexibility to design their programs in a way that will address their unique needs and circumstances.

CASELOAD REDUCTION CREDIT

To ensure fair treatment of States that help families become self-sufficient and exit the welfare rolls, Congress created the caseload reduction credit. The credit reduces the minimum participation rate a State must meet by the reduction in the State's TANF caseload in the prior year

compared to its AFDC caseload in FY 1995. It excludes reductions due to Federal law or to changes in eligibility criteria.

To avoid artificial reductions in the minimum participation rates, the calculations take into account cases receiving assistance in separate State programs used to meet the MOE requirement. We will not grant a caseload reduction credit unless the State reports case-record information for separate State programs that provide assistance.

States must submit information on eligibility changes since 1995 and the effects of those changes. We will determine the appropriate caseload reduction credit for each State using the following process:

Step 1 – We compare 1995 AFDC caseload data to State-reported TANF and separate State program caseload data.

Step 2 – States must submit a Caseload Reduction Report that includes: a complete listing and implementation dates of State and Federal eligibility changes; a numerical estimate of the impact on the caseload of each change; an estimate of the State's caseload reduction credit; a description of the methodology for the estimate; and a certification that the public had an opportunity to comment on the Report. States must also submit information on the number and distribution (by reason) of application denials and case closures in 1995 and the prior year.

Step 3 – We compare and analyze each State's methodology, estimates, and data to determine whether they are reasonable. We may request additional information to adjust the estimates. In addition, we will conduct periodic on-site visits and examine case records to validate the information we have received.

The State's estimated caseload reduction credit must factor out caseload decreases due to Federal requirements or State changes in eligibility (e.g., more stringent income and resource limitations or time limits). We clarify that full-family sanctions and behavioral requirements represent eligibility changes.

A State need not factor out the calculable effects of enforcement mechanisms or procedural requirements that enforce existing eligibility criteria (e.g., fingerprinting or other verification techniques) to the extent that they identify or deter families ineligible under existing rules.

If a State expanded eligibility, it may factor out any caseload increases due to that expansion.

To determine the credit for the overall rate, we look at the reduction in the State's total caseload. To determine the credit for the two-parent rate, the State may choose whether we look at the reduction in the two-parent caseload or the reduction in the overall caseload.

TIME LIMITS

In general, States may not use Federal funds to provide assistance to a family if it includes an adult or minor head-of-household or the spouse of a head-of-household who has received assistance for a cumulative total of more than 60 months. (There are certain specific statutory exceptions to this limitation.)

States have the option to extend assistance beyond the five-year limit for federally funded assistance for a maximum of 20 percent of their average monthly number of cases. Under these exceptions the State may extend assistance for a family if :

- The family has a hardship, as defined by the State; or
- The family includes someone who has been battered or subject to extreme cruelty.

If a State does opt to extend assistance, it may apply the extension to a particular family only once an adult in the family has received 60 cumulative months of assistance. In other words, every month of Federal assistance counts before the family reaches the 60-month limit; after 60 months, families may be exempt from termination and get extended benefits under the 20% cap.

Months in which a family receives cash assistance funded with Welfare-to-Work (WtW) monies count towards the five-year limit; months in which a family receives only noncash assistance under WtW do not count towards the five-year limit. (We define WtW cash assistance as assistance that meets basic needs and can be converted to currency.) Families may receive assistance funded with WtW grant funds after they have received 60 months of assistance even though they are precluded from receiving other TANF assistance because of the five-year limit.

FAMILY VIOLENCE OPTION (FVO)

The Family Violence Option in the statute permits a State to waive program requirements for a victim of domestic violence if complying with the requirements would make it more difficult for the victim to escape domestic violence or would unfairly penalize the individual. Under the FVO, the State must also develop a system to screen for victims of domestic violence and refer them to appropriate counseling and supportive services.

DOMESTIC VIOLENCE WAIVERS AS REASONABLE CAUSE

We will determine that a State has reasonable cause for failing to meet the work participation rates or to comply with the five-year limit on Federal assistance if its failure was due to its provision of good cause domestic violence waivers, provided that such waivers meet the standards for Federal recognition established in the rules. In brief: (1) waivers must be granted appropriately and under the Family Violence Option; (2) waivers may be for as long as necessary, but the need for a waiver must be redetermined every six months; (3) the waivers must be accompanied by a service plan designed to lead to work, to the extent that work is consistent with helping the victim achieve safety; and (4) States must submit information on their service strategies and procedures and the total number of waivers granted in the annual report.

- For work participation rates, a State must provide evidence that it achieved the applicable work rates, except with respect to any individuals receiving federally recognized good cause domestic violence waivers of work requirements (i.e., when cases with such waivers are removed from the calculations in determining the overall and two-parent participation rates).

- For time limits, a State must provide evidence that, when individuals with federally recognized good cause domestic violence waivers are excluded from the calculation, the percentage of families receiving federally funded assistance for more than 60 months did not exceed 20

percent of the total. States may provide such waivers for as long as necessary based on their assessment that the individual or family needs an extension of its time limit because of prior or current domestic violence or the risk of domestic violence.

DOMESTIC VIOLENCE WAIVERS AND OTHER PENALTY RELIEF

We will also consider federally recognized good cause domestic violence waivers in determining whether a State qualifies for a work penalty reduction based on degree of noncompliance. We may consider federally recognized good cause domestic violence waivers in deciding whether to grant a State penalty relief through corrective compliance.

WELFARE REFORM WAIVERS

The statute establishes that States need not follow TANF requirements to the extent that they are "inconsistent" with welfare reform waivers in effect. In the final rule, we provide guidance as to how we will determine whether a State that had either a work-related waiver or a waiver that time-limited cash assistance is subject to a TANF penalty for failing to meet work requirements, impose pro rata sanctions, or comply with the five-year limit on Federal assistance.

The definition of "waiver" enables States to continue waivers, while clarifying the extent to which we will recognize inconsistencies related to meeting the TANF work and time-limit requirements.

A “work-related waiver” is the cluster of policies including the explicitly granted waiver affecting a policy also addressed in section 407 (i.e., a policy regarding allowable activities, hours, exemptions from the denominator, and sanctions) as well as all prior law related to those policies. "Waiver" for a time limit is the cluster of policies implementing an explicitly granted waiver that terminated assistance for an individual or a family based on the passage of time, the policy in section 408(a)(7).

In general, States may not avoid data collection requirements, child support requirements, time-limit penalties, or work participation penalties by continuing waiver policies (see below). States may not expand the geographic scope of waivers or the scope of families covered. However, they may modify policies to make them more consistent with TANF.

The Governor must certify in writing which specific inconsistencies the State will continue and the applicable alternative work or time-limit policies in effect.

States may not claim waiver inconsistencies if they discontinued their waiver policies since enactment.

We will calculate work participation rates under both the TANF requirement and the State's alternative waiver rules and make that information public.

THE EFFECT OF WAIVERS ON WORK REQUIREMENTS

If a State is implementing policies in accordance with an approved waiver, the participation requirements apply except to the extent that they are inconsistent with the waiver. Except as

applicable to a very small number of research cases, we do not recognize any inconsistencies with respect to the participation rates themselves.

If the State has an approved waiver that explicitly addresses a policy that is also addressed in section 407 (i.e., a policy regarding allowable activities, hours, exemptions from the denominator, and sanctions), we consider provisions of prior law (e.g., activities and exemptions allowed under JOBS) that relate to the policies in section 407 to be part of its waiver. For example, the State could calculate its participation rates under the rules in effect under prior law (except as modified by the waiver). However, the target participation rates and the penalty amounts under TANF would apply.

The rules recognize a waiver affecting minimum average hours of work as inconsistent if it specifies an individual's mandated hours of participation in accordance with his or her particular circumstances (under criteria described in the waiver), an individualized plan for achieving self-sufficiency, or other written State policy.

If a State is continuing research group policies in order to complete an impact evaluation of a waiver demonstration, the demonstration's control group may be subject to prior law and its experimental group may be also subject to prior law, except as modified by the waiver.

THE EFFECT OF WAIVERS ON THE TIME LIMIT

If the five-year limit is inconsistent with a State's waiver, the State may continue its waiver policies until the waiver expires.

The five-year limit is inconsistent with the State's waiver if:

- The State has an approved waiver that provides for terminating cash assistance to individuals or families because of the receipt of assistance for a period of time; and

- The State would have to change its waiver policy in order to comply with the five-year limit.

Generally, under an approved waiver, a State will count toward the five-year limit all months for which the adult subject to a State waiver time limit receives assistance with Federal TANF funds, just as it would if it did not have an approved waiver.

The State need not count toward the five-year limit any months for which an adult receives assistance with Federal TANF funds while the adult is exempt from the State's time limit under the terms of the State's approved waiver or if the adult is subject to (but has not reached) an adult-only time limit.

The State may continue to provide assistance with Federal TANF funds for more than 60 cumulative months, without a numerical limit, to families with extensions to the time limit, under the provisions of the terms and conditions of its approved waiver, as long as the State's waiver authority has not expired.

If a State is continuing an experimental design in order to complete an impact evaluation of a waiver demonstration, the demonstration's control group may be subject to prior law and its experimental group may be also subject to prior law, except as modified by the waiver.

TANF EXPENDITURES

States have broad flexibility on how to expend Federal TANF funds and State (MOE) funds. However, there are limitations.

EXPENDITURES

"Expenditures" means outlays. States may not claim revenue losses as expenditures. They may claim refundable earned income tax credits that result in payments to families, but they may not claim nonrefundable tax credits or other kinds of tax measures that result in foregone revenue.

ADMINISTRATIVE COSTS

By statute, each State is subject to separate 15-percent caps on the amount of the Federal and MOE funds it may spend on administrative activities. Under the final rules, information technology costs related to monitoring and tracking of TANF requirements are excluded from both these caps.

"Administrative costs" is defined as costs necessary for the proper administration of the TANF program or separate State programs. It includes the costs for general administration, eligibility determination, and program coordination, including indirect (or overhead) costs.

The definition does not include the direct costs (including salaries and benefits) associated with providing program services, such as diversion benefits, case management, job development, and post-employment supports, screenings and assessments, and the development of employability plans and work services.

Expenditures for contract activities are treated as program or administrative costs based on the nature or purpose of the contract.

MAINTENANCE-OF-EFFORT (MOE)

The rule incorporates three statutory provisions that require States to spend a minimum amount of their own funds every year for qualified expenditures on behalf of eligible families.

(1) In every fiscal year, each State must spend at least 80 percent of what it spent in FY 1994 if it does not meet the minimum work participation rates; or it must spend at least 75 percent of what it spent in FY 1994 if it meets the minimum work participation rates. (This is known as the basic MOE requirement.) If it spends less than the required amount, it is subject to a penalty based on the size of the shortfall.

(2) If a State fails to meet its basic MOE requirement during a year in which it receives a Welfare-to-Work formula grant, its TANF grant will be reduced by the amount of the Welfare-to-Work formula grant it received.

(3) Contingency Funds available to a State may be retained only to match State expenditures in the State's TANF program that exceed its State expenditures in FY 1994. An annual reconciliation must be completed to determine how much of the contingency funds received in a fiscal year may be retained and how much, if any, must be remitted. If the State fails to remit the required amount, it faces a reduction in its TANF grant equal to the amount of funds not remitted.

For the basic MOE requirement, States may expend their MOE funds under the TANF program or under separate State programs that are not generally subject to the TANF rules. Only expenditures in TANF count towards the Contingency Fund MOE requirements.

In order to count towards MOE, expenditures must be on behalf of "eligible families." Under the rule, this means, to count as MOE, expenditures must be on families with a child who lives with a custodial parent or other adult caretaker relative and who meet the financial eligibility criteria under the State's TANF plan.

In certain cases, States may claim, as MOE, expenditures on legal aliens who are not eligible for benefits under the State's TANF program. In limited circumstances, they may also be able to claim expenditures on illegal aliens. Also, States may claim, as MOE, expenditures for families who have received 60 months worth of federally funded benefits.

As part of an annual report, States must submit information on any program for which they are claiming MOE. The information includes the name and purpose of program, eligibility criteria, a description of applicable work activities, total program expenditures, and total expenditures claimed for MOE. If the program was not previously a part of the prior title IV-A programs, a "new spending" test applies. If this test applies, the State must also report the total program expenditures in fiscal year 1995. It may only claim as MOE the difference between the expenditures on eligible families in the year and the total program expenditures in 1995.

USE OF FEDERAL FUNDS

A State faces a financial penalty if it uses Federal funds in violation of the Act. The single audit conducted under the Single Audit Act, supplemented by other related audits, reviews, and data sources will help identify violations.

Any use of funds that violated the provisions of the Act, section 115(a)(1) of PRWORA, the provisions of 45 CFR part 92 or OMB Circular A-87 will be considered to be a misuse of funds.

Misuse of funds will be considered intentional if there is supporting documentation, such as Federal guidance or policy instructions, indicating that Federal TANF funds could not be used for that purpose.

A State may transfer a total of up to 30 percent of its TANF grant to the Discretionary Fund of the Child Care and Development Fund and the Social Services Block Grant. (The maximum amount that may be transferred to SSBG is 10 percent now, but only 4.25 percent in FY 2001 and thereafter.) The transfers must occur during the year of the grant. Transferred funds are subject to the rules of the program to which they are transferred (including the administrative cost caps).

State may reserve Federal funds for future years. Reserved funds may only be spent on assistance and associated administrative costs.

RECIPIENT AND WORKPLACE PROTECTIONS

The final rules clarify that, notwithstanding specific language limiting the scope of the TANF rules, TANF programs are subject to Federal employment and non-discrimination laws.

In the annual report, States must provide descriptions of their procedures for handling displacement complaints.

State child care and TANF agencies both have a responsibility to inform families that single custodial parents of children under 6 may not be sanctioned if child care is unavailable and to provide them with the criteria used in making this determination. States will receive the maximum five-percent penalty if there is a pattern of substantiated complaints or States do not have a statewide process in place to inform parents of this exemption and enable them to demonstrate the lack of child care.

DATA COLLECTION AND REPORTING

The data reporting requirements in the final rule maintain accountability and collect data in critical program areas, but are streamlined relative to those in the proposed rule. The number of required elements has been reduced, some data elements have been made optional for certain family members, and (under the revised definition of assistance) the number and types of SSPs on which a State must report and the number of data elements on which a State must report case-record data have been reduced.

Most of the information required under the rules is required by section 411(a) of the Act. The rules also require reporting of some additional data elements necessary to ensure accountability under section 409(a) (penalties) and to meet other statutory provisions, such as grants to States under section 403, administrative provisions under section 405, and the annual report to Congress under section 411(b).

The final rule requires States to submit three quarterly reports (the TANF Data Report, the SSP-MOE Data Report, and the TANF Financial Report) and an annual report (that contains some program characteristics information, certain definitions, information on TANF child care disregards, and information on MOE programs).

The first quarterly reports are due February 14, 2000. However, if a State clearly demonstrates that its failure to submit the first two quarters of data is due to Y2K compliance activities and it submits the missing data by June 30, 2000, it will receive reasonable cause (and not be subject to a reporting penalty).

TANF DATA REPORT

This quarterly report requires States to collect and report:

- Case-record information on individuals and families receiving assistance and families no longer receiving assistance;
- Information to assess performance related to the work requirements;
- Information to allow us to administer the penalty provisions;
- Other information required by section 411(a); and
- Additional items necessary to operate a data collection system such as FIPS Codes.

SSP-MOE DATA REPORT

A State must collect and report data similar to that required by the TANF Data Report on individuals and families receiving assistance and families no longer receiving assistance under separate State programs if it wishes to:

- Receive a high performance bonus (only sections one and three of the Data Report are required); or
- Qualify for a caseload reduction credit

A State must submit this report only if the SSP is providing assistance (as defined in the rules).

TANF FINANCIAL REPORT

In this quarterly report, a State must report:

- Information necessary to estimate the amounts to be paid to a State each quarter;

- Information on Federal TANF, State TANF, and separate State program expenditures, for a variety of expenditure categories (such as assistance, administration, child care, refundable tax credits, transportation, work subsidies, education, pregnancy prevention activities, and family formation activities); and

- Data to carry out other financial management responsibilities.

ANNUAL REPORT

This report includes information that was proposed to be included in an annual addendum to the fiscal report and additional information related to penalties and program characteristics, including information on State MOE programs.

Under the final rules, the annual report includes additional items such as descriptions of: the State's domestic violence service strategies and procedures, its procedures for handling displacement complaints, its activities to reduce out-of-wedlock pregnancies and to promote the formation and maintenance of two-parent families, and its diversion program.

ADDITIONAL REQUIREMENTS

The rules have also:

- Defined "TANF family" for data collection purposes only. However, reporting of all data elements is not required for family members who are not receiving assistance;

- Provided a minimal definition of “two-parent family” for work participation purposes;

- Added a data element to enable better tracking of cases that are converted to "child-only" cases;

- Clarified that data on closed cases may be based on the last month of assistance;

- Defined "a complete and accurate report" as a performance standard for implementing the penalty provisions in section 409(a)(2);

- Defined "scientifically acceptable sampling method" as a basis for State sampling systems and reporting disaggregated data and clarified that States have considerable flexibility in designing their sampling plans. However, the final rule retained the proposed sample sizes. (At a later date ACF will issue the TANF Sampling and Statistical Methods Manual that will contain instructions on the approved procedures and more detailed specifications for sampling methods);

- Required a State to file quarterly reports electronically;

- Required a State to submit documentation, in addition to the SSP-MOE Data Report, to qualify for a caseload reduction credit that lowers the work participation rate it must meet.

PENALTIES

To ensure State accountability, the rules have narrowly defined the limited circumstances under which States may demonstrate reasonable cause or receive penalty reductions.

The rules address all 14 of the TANF penalty provisions included in the statute, except the penalty for noncompliance of the State Child Support Enforcement Program with its statutory requirements. This penalty will be addressed in a separate rulemaking (although, as a TANF penalty, it will generally follow the procedures established in this rule). Among the provisions in the final rule are penalties for:

(1) Use or intentional misuse of the grant;

(2) Failure to submit required reports that are complete, accurate, and timely;

(3) Failure to meet minimum work participation rates;

(4) Failure to meet the appropriate level of historic effort in the operation of the TANF program; and

(5) Failure to comply with the five-year limit on Federal funding of assistance.

Audits authorized by the Single Audit Act -- and supplemented by other audits, reviews, and other information -- are the primary vehicle for monitoring a State's compliance with several

requirements. These audits also play a role in monitoring most aspects of a State's operations. Another vehicle for monitoring a State's compliance with statutory requirements is analysis of program and financial data.

REDUCTION OF WORK PENALTIES BASED ON DEGREE OF NONCOMPLIANCE

If a State fails to meet either minimum work participation rate, it will be subject to a penalty. The statute provides for reductions in this penalty based on the degree of noncompliance. Under the rule:

- If a State fails only the two-parent work participation rate, its penalty will be prorated based on the proportion of two-parent cases in the State.

- A State will receive a reduction in penalty before the reasonable cause and corrective compliance process if the State achieves a threshold of 50 percent of the applicable participation rate. It will receive an adjustment to the penalty amount based on the degree to which its exceeds this 50-percent threshold standard, whether the State met one or both standards, the change in the number of participants since the prior year, and whether the State has failed rates for more than one year in a row.

REASONABLE CAUSE

Within 60 days of receiving notice that it is facing a penalty, the State may respond by providing information that demonstrates that our determination is incorrect.

For a number of the penalties, the State may respond that it had reasonable cause for failing to meet the requirement(s) and/or by providing a corrective compliance plan. A State will not receive a penalty if we determine that it had reasonable cause for its failure. The general factors a State may use to claim reasonable cause are:

- Natural disasters and other calamities;
- Federal guidance that provided incorrect information; or
- Isolated problems of minimal impact.

There are also three specific reasonable cause factors.

- A State may claim reasonable cause for failing to meet the work participation rate or time-limit requirements based on federally recognized good cause domestic violence waivers (as discussed above).

- A State may claim reasonable cause for failing to meet its work participation rates based on alternative services provided to refugees (under a Fish-Wilson demonstration project).

- A State may claim reasonable cause for failing to meet reporting requirements for the first two quarters of FY 2000 if it can clearly demonstrate that its failure was due to Y2K compliance activities and it submits the required data for those two quarters by June 30, 2000.

The Secretary has discretion to grant reasonable cause in other circumstances.

CORRECTIVE COMPLIANCE

For a number of the penalties, if a State does not claim reasonable cause, or if it does not demonstrate that it had reasonable cause, it may enter into a corrective compliance plan that will correct or discontinue a violation, in order to avoid the penalty.

The corrective compliance plan must include:

- A complete analysis of why the State did not meet the requirements;

- A detailed description of how the State will correct or discontinue, as appropriate, the violation in a timely manner;

- The milestones, including interim process and outcome goals, the State will achieve to assure it comes into compliance within the specified time period; and

- A certification by the Governor that the State is committed to correcting or discontinuing the violation.

A State will not receive a penalty with respect to any violation covered by an accepted corrective compliance plan if the State completely corrects or discontinues the violation within the period covered by the plan.

For failing a work participation rate or to comply with the five-year limit, a State must achieve compliance by the end of the first year that ends at least six months after receipt of the plan. The State may negotiate the compliance period for the other penalties.

Under limited circumstances, a State may receive a reduced penalty even if it fails to correct or discontinue the violation completely pursuant to its corrective compliance plan in a timely manner. To receive a reduced penalty, the State must demonstrate that it met one or both of the following conditions:

- Although it did not achieve full compliance, the State made substantial progress towards correcting or discontinuing the violation (for work participation, a State must reduce by 50 percent the difference between the participation rate it achieved in the year for which it is subject to a penalty and the rate applicable during the penalty year; the penalty year is the subsequent or, in some cases, the second subsequent year); or

- The State's failure to comply fully was attributable to either a natural disaster or regional recession.

USING FLEXIBILITY TO EVADE ACCOUNTABILITY

Although we do not believe States will use statutory flexibility to evade accountability for children and families, we will monitor State policies to insure that:

- States do not divert families to a separate State program in order to avoid the work participation rates or divert the Federal share of child support collections; and

- States do not convert cases to child-only cases to avoid the work participation rates, time limits, or other TANF program requirements.

DEFINITIONS

Generally, to ensure that States have maximum flexibility to design their programs in a way that will address their unique needs and circumstances, we have chosen not to define statutory terms further. There are a few exceptions (e.g., assistance, administrative costs, and waivers) that have substantial policy significance. We have discussed these terms elsewhere in the summary.